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Consultation on the functioning of the Auctioning Regulation pursuant to the scheme for greenhouse gas emission allowances trading within the Community (EU ETS).

Fields marked with * are mandatory.

Introduction

Auctioning is the default method of allocating allowances within the EU emissions trading system (EU ETS, established by Directive 2003/87/EC). This means that the majority of allowances are brought into circulation by auctioning and businesses have to buy an increasing proportion of allowances through auctions or in the secondary market. Auctioning is the most transparent allocation method and puts into practice the principle that the polluter should pay with no distortion in the markets.

Following a detailed consultation in 2009 and an in-depth Impact Assessment of several options, the modalities for conducting auctions of allowances (constituting the primary market of the EU ETS) were established through the Auctioning Regulation (Regulation (EU) No 1031/2010) in 2010 (Regulation on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the EU Emission Trading System). The Auctioning Regulation was amended in 2011 to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013, in 2013 to improve certain technical aspects concerning procurement procedures for appointing auction platforms and the auction monitor, and the holding of auctions, and otherwise only to list the auction platforms appointed to conduct the auctions and to incorporate the Backloading Regulation (Regulation (EU) No 176/2014).

Europe's carbon market was the first cap-and-trade system in the world to put in place large-scale auctioning as of 2012. In no other existing carbon market have as many allowances, covering such a large proportion of the total allowances issued, been put in circulation via auctioning as in the EU ETS. To date over 700 auctions for more than 2 billion EU ETS emission allowances (hereafter "allowances" this reference also includes allowances for aviation) having taken place without any noticeable distortion or malfunctioning, indicating that the infrastructure established is performing well.

Further amendments of the Auctioning Regulation are required to make adjustments to certain modalities stemming from the forthcoming introduction of the Market Stability Reserve (MSR) (Decision 2015/1814/EU). This consultation addresses two objectives. Firstly, it aims to collect stakeholders' views on the changes to the Auctioning Regulation directly related to the technical aspects of implementation of the MSR (Decision EU 1814/2015). In addition, this consultation

contains questions that allow stakeholders to share their views on the functioning of the Auctioning Regulation in order to assess the extent to which the more than 700 auctions of allowances executed to date have been implemented effectively and efficiently and to identify any potential areas for further technical improvements. The functioning of the ETS Directive was the subject of a recent consultation (Consultation on revision of the EU Emission Trading System (EU ETS) Directive, carried out 19/12/2014 - 16/03/2015). In order to avoid overlap, the scope of this consultation is limited to those aspects directly related to the implementation of auctions for emissions allowances covered in the Auctioning Regulation.

Profile

* P.1 What is your profile?

Government entity/regulatory authority

[1] The category of micro, small and medium-sized enterprises (SMEs) is considered to be made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million (are defined in the EU recommendation 2003/361).

* Please enter the name of your business/organisation/association etc.:

Dutch Emissions Authority (NEa) for the Netherlands Ministry of Infrastructure and Environment

P.2 Please enter your contact details:

* Street & number:

P.O. box 91503

* Office/apt:

Dutch Emissions Authority (NEa)

* Locality:

The Hague

* Postal code:

2509 EC

* Country:

The Netherlands

* Telephone:

+31.70.4568050

* Email:

info@emissionsauthority.nl

P.3 If relevant, please state if the sector/industry you represent falls within the scope of the EU ETS:

- ○ Yes
- ○ No

* P.4 Please state what sector you/ the entity you represent is active in/ represents:

Select all that apply

- ☐ Electricity generation
- ☐ Non-electricity energy sector
- ☐ Non-energy-intensive manufacturing sector
- ☐ Energy-intensive manufacturing sector
- ☐ Aviation sector
- ☐ Financial sector
- ☑ Other

* P.5 Since the introduction of large scale auctions of allowances (from 2012 to 2015) have you/ the entity you represent participated directly or indirectly in the primary market for allowances (auctions of allowances)?

Select all that apply

- ☐ Yes, directly
- ☐ Yes, via intermediary
- ☑ No

* P.6 In the past year (2015) have you/ the entity you represent directly or indirectly participated in the primary market for allowances (auctions of allowances)?

- ☐ Yes, directly
- ☐ Yes, via intermediary
- ☑ No

* P.7 Have you/ the entity you represent ever been denied direct access to auctions of allowances?

Never requested direct access to auctions of emission allowances

* P.8 In 2015 have you/ the entity you represent participated in the secondary market for allowances (in non-auction exchanges or over the counter)?

Select all that apply

- [ ] Yes, directly in non-auction exchanges
- [ ] Yes, via intermediary in non-auction exchanges
- [ ] Yes, directly over the counter
- [ ] Yes, via intermediary over the counter
- [x] No

* P.9 From 2012 to 2014 have you/ the entity you represent participated in the secondary market for allowances (via non-auction exchanges or over the counter)?

Select all that apply

- [ ] Yes, directly in non-auction exchanges
- [ ] Yes, via intermediary in non-auction exchanges
- [ ] Yes, directly over the counter
- [ ] Yes, via intermediary over the counter
- [x] No

* P.10 Please indicate your preference for the publication of your response on the Commission's website: (Note that whatever option is chosen, your contribution may still be subject to requests for 'access to documents' under Regulation 1049/2001):

- (●) Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication;
- ( ) Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication;
- ( ) Not at all — please keep my contribution confidential (it will not be published, but will be used internally within the Commission).

P.11 Transparency Register ID number (if you/ the entity you represent is registered):

Questions

CHAPTER II of the Auctioning Regulation covers general provisions on the design of the auctions.

* Q.1 Articles 4 to 7 of the Auctioning Regulation lay out provisions determining which products are to be auctioned, the auction format, how the submission and withdrawal of bids is to take place, how to determine the auction clearing price and how to resolve tied bids.

In the light of your experience with the auctions performed, do you consider changes to be necessary regarding the general provisions on the design of the auctions to further improve the effectiveness and efficiency of the auctions?

- ○ Yes
- ● No

Chapter III of the Auctioning Regulation covers provisions regarding the auction calendar.

* Q.2 The date and volumes of every auction are currently set on the basis of calendar years (from January to December). Following the 2015 MSR Decision (Decision 2015/1814/EU), in principle for each year, from 2019 onwards, a certain number of general allowances may need to be deducted or added to the number of allowances to be auctioned over a 12-month period running from September to August. When this happens, if the calendar-year cycle is kept for establishing the auction calendars, the volumes to be auctioned in September to December of each year would have to be revised, and the corresponding auction calendars amended.

Once the MSR is in place, would you:

- ○ a) prefer to continue the auction calendars on a calendar-year cycle (January to December);
- ● b) prefer the auction calendars to be changed to a September to August cycle;
- ○ c) have no preference?

* Q.3 Please explain the reasons for your answer to the previous question:

> We have a preference for a change to a September to August cycle, because this change would ensure the earliest possible adaptation to the new auctioning volumes and would allow for any changes in budgetary forecasts, provided the changes are made in a transparant, predictable manner. Transparency and predictability (to the extent possible) are important prerequisites in budgetary planning.

* Q.4 Since auctions started, the monthly auction volume for August has always been substantially lower than in other months, pursuant to Article 8(5) of the Auctioning Regulation. Article 8(5) of the Auctioning Regulation establishes that the volume to be auctioned is to be distributed evenly over the auctions held over a given year, except that volumes in August auctions are to be half the volumes of auctions in other months. This provision would also apply to annual cycles when the implementation of the MSR Decision would lead to deductions in the number of allowances to be auctioned.

Do you consider that:

- ● a) maintaining the reduction of volumes in August is appropriate;
- ○ b) the reduction of volumes in August should be modified?

Chapter IV of the Auctioning Regulation covers provisions regarding access to the auctions.

* Q.5 Article 8(2) of the Auctioning Regulation stipulates that auctions should not occur during public holidays that affect international financial markets, or in the 2 weeks over Christmas and New Year.

As a result, although the volume of each auction (except for those in August) is the same, by virtue of variations in the number of auctions within each month, the total volume auctioned varies in different months. In particular, there is often a sharp reduction in total volumes auctioned in December.

Do you consider that the existing provisions (the volume to be auctioned is distributed evenly over the year, leading to the auctioning of a fixed amount per auction but a differing amount per month) are:

- (•) a) Appropriate;
- ( ) b) should be modified to ensure a fixed volume per month;
- ( ) c) should be modified in another way?

* Q.6 Do you have any further comments regarding the provisions of the Auctioning Regulation on the auction calendar?

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See below, Q10.
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* Q.7 Article 18 of the Auctioning Regulation establishes that bidding in the auctions of emission allowances is restricted to: a) ETS operators bidding on own account; b) investment firms authorised under the Markets in Financial Instruments Directive (MiFID) bidding on their own account or on behalf of their clients; c) credit institutions authorised under the Capital Requirements Directive (CRD) IV bidding on their own account or on behalf of their clients; d) business groupings of persons listed in point (a) bidding on their own account and acting as an agent on behalf of their members; (e) public bodies or state-owned entities of the Member States that control any of the persons listed in point (a); and f) Persons exempt under Markets in Financial Instruments Directive (MiFiD) (for an ancillary activity) but authorized by the competent authorities of Member states bidding either on their own account or on behalf of clients of their main business.

To date, some means of access to auctions have been more used than others. Moreover, the implementation of Markets in Financial Instruments Directive (MiFiD) II may *de facto* indirectly influence the portfolio of persons falling under the eligible categories listed in Article 18 of the Auctioning Regulation.

Do you consider this list of persons eligible to participate in auctions adequate?

- (•) Yes
- ( ) No
- ( ) No opinion

Chapter VIII of the Auctioning Regulation covers provisions regarding the appointment of auction platforms for Member States opting-out of the Common Auction Platform.

* Q.8 As explained in Recital 8 to the Auctioning Regulation, in order to mitigate any risk of reduced competition in the carbon market, in its Article 30 the Auctioning Regulation provides the possibility for Member States to opt out of the Common Auction Platform by appointing their own auction platforms under certain conditions. This has led to the appointment of a limited number of opt-out auction platforms in parallel to the Common Auction Platform, and the experience obtained to date indicates that the resulting auctioning process has been open, transparent, non-discriminatory and without any distortion or market malfunction.

Do you agree that this set-up, with a Common Auction Platform and a limited number of opt-out platforms, performs satisfactorily?

Yes. We do however note that it is difficult to assess whether this set-up is indeed effective. To date, an external evaluation of performance of the auctioning platforms has not yet been carried out. The auction monitor, as envisaged in Article 24 of the Auctioning Regulation, has not performed this role. We note that the current situation is workable, but complex. One element of the complexity is the mixing of information for various participating countries, including EFTA countries, in different auctions performed by EEX. We would favor a clear distinction of the information of the EU-25.

* Q.9 Do you have any recommendations for improvements in this set-up?

See answer to Q8 and Q11.

Chapter XVI of the Auctioning Regulation covers provisions regarding transparency and confidentiality in performing the auctions.

* Q.10 Articles 60 to 63 of the Auctioning Regulation lay down provisions regarding the announcement and notification of auction results, publication of other non-confidential information related to the performance of the auctions and protection of confidential information related to the performance of the auctions.
In the light of your experience with the auctions performed, are there any changes regarding the transparency and confidentiality provisions that you would deem necessary to further improve effectiveness or efficiency?

We are in favour of improvements in transparency of auctioning volumes, calendars and distribution of volumes among Member States. This concerns primarily the traceability and presentation of information, but also relates to depth of analysis of outcomes.
Currently, the information provided by the Commission's and EEX websites, in our view, is needlessly opaque. It can be made more transparent. providing a clear multi-annual overview of auctioning volumes and their Member State distribution. Improved transparency is all the more warranted when auctioning volumes are to be adapted more frequently as a result of application of the

MSR. We would expect other member states to support additional transparency in these aspects.
As for analyses, while the monthly reports contain much useful information, they could be enhanced by analysis of outcome of auctions in a longer perspective and a review of market developments. We note that recently publication of the monthly reports has suffered delays and we would favour timely publication of the reports.

* Q.11 Do you have any other specific comments on the Auctioning Regulation, and in particular on the way EU ETS auctions have been designed and implemented, that you would like to share?

The CAP set-up certainly performs well in our view. Above, we have made a few suggestions for improvement (external evaluation of performance and transparency). Secondly, another important indicator of the success of auctions is access to bidding. While we do not see major discrepancies or problems, it is difficult to assess whether access is indeed optimal. An external evaluation of performance could well provide such an in-depth review of experience to date.
A third remark concerns future redundancy of several provisions in the Regulation. With the entry into force of MiFID II we would expect several Regulation provisions to become obsolete. Deleting redundant provisions would of course improve readability of the Regulation and might also be appropriate with a view to "Better Regulation". .

* Q.12 Do you consider that the Auctioning Regulation has been successful in achieving its objectives of ensuring that auctioning of EU ETS allowances is predictable, with full, fair and equitable access, avoiding distortions to competition, and with a cost-efficient organization and participation mechanism compared to alternative modes of organizing auctions of EU ETS allowances?

- (x) Yes
- ( ) No

Contact

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